

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9824 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK RAMSING @ RAJDEVSINGH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 14th October, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order. During the period from 13th September, 1996 to 10th October, 1998, some four offences punishable under the Bombay Prohibition Act are registered against the petitioner. In the offence registered on 13th September, 1996, a large quantity of foreign liquor and country liquor were found from the possession of the petitioner, and in the latter three offences, the petitioner was found to be in possession of country liquor. The offences registered on 13th September, 1996, 23rd August, 1998 and 10th October, 1998 are shown to be pending investigation. One offence registered on 12th April, 1997, is pending trial before the concerned court. Besides, two witnesses have given statements in respect of the nefarious activities of the petitioner and its adverse effect on the public order. They have particularly referred to the incidents of 1st September 1998 and 4th September, 1998. In each of the said incidents, the concerned witness having refused to submit to the command of the petitioner, the petitioner is alleged to have beaten the witness in a public place, and to have used a knife to threaten the witnesses and to terrorise the innocent members of the public gathered on the spot. The petitioner's activities are alleged to have disturbed the public peace and the even tempo of life.

The only challenge against the impugned order of detention is that the reports of the chemical examination in respect of the liquor allegedly seized from the petitioner have not been considered by the Detaining Authority and thereby the satisfaction recorded by the Detaining Authority is vitiated. The said reports are not supplied to the petitioner either and the petitioner's right to make an effective representation has, thus, been infringed. The averments remain uncontroverted.

It can not be gainsaid that the reports of the chemical examination of the liquor allegedly recovered from the possession of the detenu are vital documents, and ought to be considered by the Detaining Authority while recording his satisfaction. In the present case,

the same having not been done, the satisfaction recorded by the Detaining Authority can not be said to have been based on the comprehensive material and the same is, therefore, vitiated. Besides, by not supplying the said reports to the petitioner, the petitioner also is deprived of his right to make an effective representation. The petitioner's right has, thus been infringed. The subjective satisfaction recorded by the Detaining Authority and the order of detention, both are, therefore, vitiated. The continued detention of the petitioner is, therefore, null and void.

The petition is allowed. The order dated 14th October, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI